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February 5, 1996

RECEIVED

William F. Caton
Acting Secretary
Federal Communications Commission
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Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
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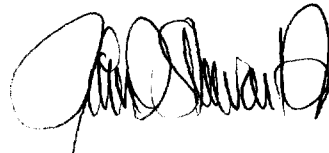
Re: Definition of Markets for Purposes of the Cable Television
Mandatory Television Broadcast Signal Carriage Rules,
CS Docket No. 95-178

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Fouce Amusement Enterprises, licensee of television station KRCA, Riverside, California, are an original and four copies of its Comments in regard to the above-captioned Notice of Proposed Rulemaking.

Should there be any questions regarding this matter, please contact the undersigned.

Very truly yours,



John I. Stewart, Jr.

Enclosures

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Definition of Markets for Purposes of the
Cable Television Mandatory Television
Broadcast Signal Carriage Rules

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COMMENTS OF FOUCE AMUSEMENT ENTERPRISES

Fouce Amusement Enterprises ("Fouce"), by its attorneys, hereby submits these comments in regard to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding.

Fouce is the licensee of television station KRCA, Riverside, California ("KRCA"). KRCA is a commercial UHF station dedicated to serving the diverse non-English speaking population of southern California. The station broadcasts programming in Chinese, Korean, Vietnamese, Armenian, Tagalog, and Farsi, as well as English, to viewers throughout the geographically extensive Los Angeles market.

KRCA urges the Commission to adopt must-carry market definitions based on Nielsen's Designated Market Areas ("DMAs") in place of Arbitron's 1991-1992 Areas of Dominant Influence ("ADIs"). The substitution of DMAs for ADIs is necessary to ensure that must-carry rights and copyright liability are based on market definitions that reflect current marketplace realities.

The Market Definitions Should Reflect Actual Broadcast Markets.

Congress's adoption of market definitions grounded on ADIs, in 47 U.S.C. §534(h)(1)(C), reflected a desire to match the scope of a station's must-carry rights with the geographic scope of the broadcast market in which it actually operated. The use of the independently generated ADIs accomplished this result, since ADI definitions had been developed through free-market economic forces, and were relied upon by stations, advertisers, and consumers.

Congress has now addressed the dilemma in which the Commission finds itself after the elimination by Arbitron of its ADI definitions. In the Telecommunications Act of 1996, passed by both houses on February 1, 1996, the FCC is directed by Section 301(d)(1)(A) (which will amend 47 U.S.C. §534(h)(1)(C)) to use "commercial publications which delineate television markets based on viewing patterns" to define must carry markets. This amendment clearly refers to Nielsen's DMA publications, which are the principal television market references remaining after discontinuation of the ADI publications. Thus, the Commission should adopt DMA definitions for purposes of defining must carry markets.

An example of the effect of updating market definitions to take account of current DMAs can be seen in the market modification proceeding of Chronicle Publishing Company, 10 FCC Rcd 9474 (1995), *recon. pending*. In that case, the Commission originally relied, in modifying KRCA's must carry market to exclude the western portion of Ventura County, on an earlier decision in which it had found "important" the fact that Arbitron divided Ventura County into two portions

"for audience reporting purposes" (though not for ADI definition purposes). 10 FCC Rcd at 9483. Nielsen, by contrast, does not so divide Ventura County, and considers it all to be within the Los Angeles market. Thus, if the FCC applies the current DMA definition, it would apparently be unable to rely on the now-outmoded Arbitron distinction between Ventura East and Ventura West in determining the proper extent of KRCA's must carry market.¹

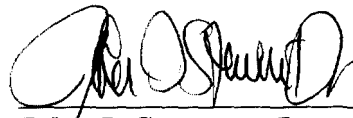
Reliance on Outdated Market Definitions Would Be Contrary to Past Commission Policy. Continued reliance on the 1991-92 ADI market definitions would also be contrary to a prior Commission policy determination. The Commission previously considered whether to freeze market definitions based on the 1991-92 ADI markets, or to use updated ADI information in subsequent years. See Implementation of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 2965 (1993). Noting that the majority of commentors favored the use of updated market definitions, the Commission established a system whereby must carry markets would be updated every three years to coincide with the must-carry/retransmission consent election. 8 FCC Rcd at 2975. The Commission's reason for adopting this procedure, namely that it would permit market definitions to reflect changing markets, is no less compelling today.

¹ Section 301(d)(2)(A) of the Telecommunications Act of 1996 makes the new market definitions applicable to "any request pending under Section 614(h)(1)(C) . . . on the date of enactment."

CONCLUSION

For the foregoing reasons, Fouce respectfully urges the Commission to adopt current DMA definitions to define the scope of television must carry markets under 47 U.S.C. § 614(h)(1)(C), as amended.

Respectfully submitted,
FOUCE AMUSEMENT
ENTERPRISES



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Its Counsel

February 5, 1996

CERTIFICATE OF SERVICE

I, John I. Stewart, Jr., do hereby certify that copies of the foregoing
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postage prepaid mail, this 5th day of February 1996 to the following:

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